

Office of the Attorney General
State of North Dakota

Opinion No. 83-32

Date Issued: August 15, 1983

Requested by: Representative William E. Gorder

--QUESTION PRESENTED--

Whether the Department of Human Services may purchase any services for developmentally disabled persons from proprietary providers.

--ATTORNEY GENERAL'S OPINION--

It is my opinion the the Department of Human Services may purchase services for developmentally disabled persons from proprietary providers as long as those services are purchased by the department's Division of Vocational Rehabilitation.

--ANALYSIS--

The Department of Human Services purchases, for developmentally disabled persons, those services identified in the regularly promulgated rules found at Section 75-04-01-17 of the North Dakota Administrative Code as follows:

1. Residential services:
 - a. Intermediate care facility for the developmentally disabled;
 - b. Adult group homes;
 - c. Transitional community living facility;
 - d. Minimally supervised living arrangement;
 - e. Supported living arrangement; or
 - f. Out-of-home respite care.
2. Day services:
 - a. Developmental day activity;
 - b. Work activity;

- c. Vocational evaluation;
- d. Vocational development;
- e. Extended employment;
- f. In-home respite care;
- g. Infant development; or
- h. Child development.

The department purchases all listed services through its Division of Developmental Disabilities. It purchases services in transitional community living facilities and vocational evaluation and vocational development services through its Division of Vocational Rehabilitation. It purchases services in intermediate care facilities for the developmentally disabled through its Medical Services Division.

The provisions of Chapter 25-16 of the North Dakota Century Code govern the purchasing of residential care and services for the developmentally disabled by the Division on Developmental Disabilities.

Section 25-16-01(1), N.D.C.C., defines 'treatment or care center' to mean:

25-16-01. DEFINITIONS. In this chapter unless the context or subject matter otherwise requires:

1. 'Treatment or care center' means any hospital, home, or other premises, owned and operated by a charitable nonprofit corporation or association, especially to provide relief, care, custody, treatment, day activity, work activity, or extended employment services to developmentally disabled persons. (Emphasis supplied).

Section 25-16-02, N.D.C.C., requires a license to operate a treatment or care center, and Section 25-15-03, N.D.C.C., gives the Developmental Disabilities Division the responsibility for issuing licenses and sets forth the requirements for the license. Both Sections 25-16-02 and 25-16-03, N.D.C.C., require the licensee to be a 'charitable nonprofit association[s] or corporation[s].' Section 25-16-10, N.D.C.C., authorized the Developmental Disabilities Division to purchase services only from 'licensed treatment or care centers.'

The Division of Vocational Rehabilitation may license '[e]ligible vocational rehabilitation facilities' (Section 25-15-05, N.D.C.C.), which apply for a license, meet 'approval standards' (Section 25-15-04, N.D.C.C.), and 'provide one or more of the services enumerated in the state plan for vocational rehabilitation' (Section 25-15-02,

N.D.C.C.). The vocational rehabilitation state plan includes transitional community living facility services, vocational evaluation, and vocational development.

The Division of Vocational Rehabilitation provides 'vocational rehabilitation services to eligible disabled individuals (Section 50-06.1-05, N.D.C.C.). The licensing and purchasing activities for the Division of Vocational Rehabilitation are not circumscribed by requirements that service providers be nonprofit corporations.

The Medical Services Division is a purchaser of intermediate care services for the developmentally disabled (ICF/DD). Purchases are made pursuant to Chapter 50-24.1, N.D.C.C., and the state's medical assistance state plan. It may purchase those services from any intermediate care facility for the mentally retarded (ICF/MR). (The medical assistance program, at a state and federal level, uses the term ICF/MR. Developmental Disabilities Division uses the term ICF/DD. They are equivalent terms.) Federal Law (42 U.S.C. § 1396d(c)), in defining ICF/MR services for medical assistance purposes, requires that a facility furnishing such services be 'licensed under state law . . .' Only nonprofit providers of ICF/MR services may be licensed under the provisions of Chapter 25-16, N.D.C.C.

Your inquiry was prefaced with an explanation that concerned citizens in your district are interested in the establishment of 'group homes in the community for developmentally disabled persons'. If the contemplated 'group homes' are operated on either a proprietary or nonprofit basis, and comply with the requirements for transitional community living facility services, the Division of Vocational Rehabilitation may license them and purchase services for eligible residents. The concerned citizens have the option of forming a charitable, nonprofit association or corporation if they wish to furnish those services to developmentally disabled persons, which are only purchased by the Division of Developmental Disabilities, or which require a license issued pursuant to Chapter 25-16, N.D.C.C.

--EFFECT--

This opinion is issued pursuant to Section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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